

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff

v.

TROPICAL FRUIT, S.E.; AVSHALOM  
LUBIN; CESAR OTERO ACEVEDO; and  
PEDRO TOLEDO GONZALEZ

Defendants

Civil Action No. 97-1442-DRD

**MOTION REQUESTING LEAVE TO FILE SUR-REPLY**

TO THE HONORABLE COURT:

COME NOW defendants, represented by the undersigned counsel, and very respectfully allege and pray as follows:

1. On December 16<sup>th</sup>, 2004, Plaintiff filed a motion for contempt and for defendants to show cause (Docket No. 95).
2. On May 6<sup>th</sup>, 2005 Defendants filed a motion in compliance with the Court's order to show cause and a memorandum of law in support thereof. (Docket No. 105).
3. On May 13<sup>th</sup>, 2005, Plaintiff requested an extension of time until May 17<sup>th</sup>, 2005 , to file a motion requesting leave to reply Defendants' motion. (Docket No. 108).
4. On May 17<sup>th</sup>, 2005 Plaintiff filed the motion requesting leave to reply and tendered a reply therewith. (Docket No. 110)
5. In the Reply tendered on May 17<sup>th</sup>, 2005 Plaintiff set forth new arguments of law as to Defendants' alleged attempt to seek the modification of the Consent Decree by the Court while misconstruing the statements in Defendants' memorandum in support of

the motion in compliance with order to show cause. Defendants respectfully submit that Plaintiff's argument mandate a response.

6. If this Court grants Plaintiff leave to file its tendered reply, Defendants should also be granted leave to sur-reply as it is hereby respectfully requested.

WHEREFORE, it is respectfully requested from this Honorable Court to grant this request and allow Defendants to file a sur-reply.

Respectfully submitted.

In San Juan, Puerto Rico, on this 24<sup>th</sup> day of May, 2005.

I HEREBY CERTIFY that on May 24<sup>th</sup>, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Mr. Henry Friedman, Esq., Environmental Enforcement Section, U. S. Department of Justice, PO Box 7611, Washington, D. C. 20044; Isabel Muñoz, Assistant United States Attorney, Federal Building, Room 452 Chardon Avenue, Hato Rey, Puerto Rico 00918.

I HEREBY CERTIFY that I have mailed by United States Postal Service the foregoing document to the following non CM/ECF participants: German A. González PO Box 190764 San Juan, PR 00919-0764.

SANCHEZ-BETANCES, SIFRE,  
MUÑOZ-NOYA & RIVERA, PSC.  
Counsel for Defendants  
PO Box 195055  
San Juan, PR 00919-5055  
Tel. (787) 756-7880  
Fax (787) 753-6580  
[mvila@sbsmnr.com](mailto:mvila@sbsmnr.com)

s/Marta E.Vila Baez  
MARTA E. VILA BAEZ  
USDC NO. 218111